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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-29
and
No. 73-695

CORNING GLASS WORKS,
Petitioner in No. 73-29,

v.

PETER J. BRENNAN, Secretary of Labor,
United States Department of Labor,
Respondent in No. 73-29.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETER J. BRENNAN, Secretary of Labor,
United States Department of Labor,
Petitioner in No. 73-695,

v.

CORNING GLASS WORKS,
Respondent in No. 73-695.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

OBJECTION OF CORNING GLASS WORKS TO "MOTION OF AMERICAN CIVIL LIBERTIES UNION AND NATIONAL ORGANIZATION FOR WOMEN, LEGAL DEFENSE AND EDUCATION FUND, FOR LEAVE TO FILE BRIEF *AMICI CURIAE*"

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Amici **have not satisfied the provisions of Supreme Court Rule 42(3) which require that they state the facts or questions of law involved in these cases that have not been, or will not adequately be, presented by the parties.**

Supreme Court Rule 42(3), "Briefs of an Amicus Curiae," provides, in relevant part, that when consent for filing such a brief is refused by a party the *amicus* may file a motion for leave to file and shall "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case . . . ."

Neither the American Civil Liberties Union ("ACLU") nor the National Organization for Women ("NOW") has claimed in their motion for leave to file a brief *amici curiae* that the Solicitor General of the United States, as attorney for the Secretary of Labor, will not adequately present the facts or questions of law involved in these cases. Moreover, counsel for the ACLU specifically admitted to counsel for Corning that it could not be claimed that the parties would not adequately present the facts or legal questions.

We have withheld consent to the filing of the brief by the *amici* because the parties will adequately present the facts and legal questions. Moreover, we feared that a brief hurriedly prepared by *amici* would contain errors which would create confusion if not corrected by reply brief or in oral argument. We believe that this case is sufficiently complex without permitting further complication and confusion to be created by the fact that *amici* have had insufficient time to become adequately familiar with the case.

Neither the ACLU nor NOW participated in the trials or court of appeals review of the cases now before this Court. Their unfamiliarity with these cases is evidenced by the lack of a single citation in their brief to the appendices and their reliance upon "hypotheticals" which distort the facts.

Our concern that the presentation by *amici* will confuse rather than clarify the issues presented for this Court's review is illustrated by the problem that the brief of *amici* contains serious (although no doubt inadvertent) misstatements of facts.

The first paragraph of the second argument contained in the brief of *amici*[1] states:

> "If the 1969 uniform wage rates had been instituted in 1966 it would have been clear that either equalization was not achieved or it was achieved by lowering the pay accorded males. The following hypothetical, using simplified wage rates, illustrates the point.

Wage Rates Prior to Equalization		Wage Rates After Equalization	
Women's Rate	$1.50	Women's Rate	$1.75
Men's Rate	$2.50	Men's Rate ..... (already hired)	$2.75
		Men's Rate ..... (newly hired)	$1.75"

The chart set forth by *amici* is, by its terms, a hypothetical and *amici* admit the chart differs from the facts of these cases in at least two respects.[2] However, the chart does not merely "differ from the facts." The chart is misleading in the following ways:

(a) *Amici* state, in the sentence preceding the chart, "[i]f the 1969 uniform wage rates had been instituted in 1966 it would have been clear that . . . [equalization] was achieved by lowering the pay accorded males." According to the chart, pay for males was reduced from $2.50 to $1.75 for newly hired males. However, *amici* admit, a page

[1] Brief for ACLU and NOW as *Amici Curiae* at 9.

[2] *Id.* at 10.

later in their brief, "when the wages were 'equalized' in 1969 the new uniform rate was in excess of the 1966 'male' rate . . . ."[3] Thus, although the chart shows a reduction of 75 cents per hour, the fact is that wage rates were increased.

(b) The left column of the chart shows a differential of $1.00 between the "Women's Rate" of $1.50 and the "Men's Rate" of $2.50 prior to equalization. The brief of *amici* does not state that this data is misleading. In fact, however, the maximum base wage rate differential between day inspectors and night inspectors never exceeded 19.5 cents hourly through 1967,[4] and, prior to January, 1969, was only 20.5 cents hourly for Class B[5] and 17 cents hourly for Class C Inspectors.[6] The misleading nature of the terms "Women's" and "Men's" rates is discussed in (d) *infra*.

(c) The right column of the chart shows a differential of $1.00 between the "Women's Rate" of $1.75 and the "Men's" Rate" of $2.75 after January, 1969. The brief of *amici* does not state that this data is misleading. In addition to the misleading nature of the terms "Women's" and "Men's" rates discussed in (d) *infra*, the figures bear no relationship to the facts. After January, 1969 there was a uniform job evaluated rate which was the same for all three shifts.[7] A "red circle" provision in the January, 1969, agreement provided that every person who had been employed on any job in the plant on the effective date of the

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[3] *Id.*

[4] App. (2d Cir.) 38-40.

[5] App. (2d Cir.) 183 n.4. General TV Inspectors were paid at approximately the same wage rate as the Class B Inspectors. App. (2d Cir.) 175 (Answer No. 2 in Pl. Ex. 101).

[6] App. (2d Cir.) 183 n.4.

[7] App. (2d Cir.) 183.

agreement would receive a rate higher than the job evaluated rate when he or she worked the inspection night shift.[8] Further, the differential between the job evaluated rate and the "red circle" rate attacked by the Secretary of Labor was not $1.00 an hour but rather 4 cents an hour (Class C Inspectors), or 12 cents an hour (Class B Inspectors).[9]

(d) The chart is also misleading because it characterizes the wage rates as "Women's Rates" and "Men's Rates." The record shows that every inspector who had been working on the day shift on June 1, 1966, when the night shift jobs were opened to women, had the opportunity to transfer to the higher paying night shift by June 20, 1966,[10] long prior to the 1969 time frame of the chart.

Thus, prior to and after January 20, 1969, the night shift rate and the day shift rate were paid to both men and women and not exclusively to one sex, as the chart indicates.[11]

These examples emphasize that *amici* lack the familiarity with the facts of these cases to adequately deal with the questions of law which arise from these facts. More importantly, the examples point out the potential for confusion of the issues which could result from allowing the participation of these *amici*.

The problem of correcting misleading statements of *amici* is made extremely difficult by the fact that the Solicitor General has not, as of the date of this writing, served its brief in this case upon Corning even though that brief was due no later than Monday, March 4, and oral argument is scheduled for March 25, 1974.

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[8] App. (2d Cir.) 183-84.

[9] App. (2d Cir.) 183 n.4.

[10] Brief for Corning Glass Works at 39 n.63b.

[11] Brief for Corning Glass Works at 10 n.25.

Conclusion

For the foregoing reasons, we respectfuly submit that the motion of the American Civil Liberties Union and National Organization of Women, Legal Defense and Education Fund, for leave to file a brief *amici curiae* should be denied.

Respectfully submitted.

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and
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March 13, 1974.

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CERTIFICATE OF SERVICE OF OBJECTION OF CORNING GLASS WORKS TO THE "MOTION OF AMERICAN CIVIL LIBERTIES UNION AND NATIONAL ORGANIZATION FOR WOMEN, LEGAL DEFENSE AND EDUCATION FUND, FOR LEAVE TO FILE BRIEF *AMICI CURIAE*"

I, Scott F. Zimmerman, attorney for Corning Glass Works, petitioner in No. 73-29 herein and respondent in No. 73-695 herein, as a member of the Bar of the Supreme Court of the United States, hereby certify that, pursuant

to Rule 33 of this Court, on the 14th day of March, 1974, service was made of a copy of the Objection of Corning Glass Works to the "Motion of American Civil Liberties Union and National Organization for Women, Legal Defense and Education Fund, For Leave to File Brief *Amici Curiae*" by mailing said copy in an addressed envelope, with first class postage prepaid, to (1) the Solicitor General, Department of Justice, Washington, D. C. 20530, (2) Ruth Bader Ginsburg and Melvin L. Wulf, American Civil Liberties Union, 22 East 40th Street, New York, N. Y. 10016, and (3) Kenneth M. Davidson, State University of New York at Buffalo, School of Law, John Lord O'Brian Hall, North Campus, Buffalo, N. Y. 14250.

I further certify that all parties required to be served have been served

SCOTT F. ZIMMERMAN,
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Attorney for Corning Glass Works, Petitioner in 73-29 and Respondent in 73-695.

Dated: March 14, 1974.